NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. JAIME PEREZ-AGUILAR, Defendant - Appellant.	No. 06-10198 D.C. No. CR-05-01864-DCB/JCG MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Argued and Submitted June 12, 2007
San Francisco, California

Before: BYBEE and M. SMITH, Circuit Judges, and SEABRIGHT**, District Judge.

Jaime Perez-Aguilar appeals the sentence imposed following his guilty plea to illegal reentry after deportation, in violation of 8 U.S.C. § 1326(a). Because the parties are aware of the facts of the case, we do not recount them here. We affirm.

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable J. Michael Seabright, United States District Judge for the District of Hawaii, sitting by designation.

Perez-Aguilar first argues that the district court failed to properly articulate on the record that it considered the 18 U.S.C. § 3553(a) sentencing factors. Although Perez-Aguilar did not raise an objection on this ground at sentencing, he did file a sentencing memorandum in which he argued that the district court should consider the 18 U.S.C. § 3553(a) factors, and in which he argued that the factors should persuade the district court to impose a sentence below the guidelines range. We need not decide whether Perez-Aguilar's sentencing memorandum properly preserved the reasonableness standard of review; under either a plain error or unreasonableness standard, we affirm.

Although the district court did not specifically cite the § 3553(a) sentencing factors, it "set forth enough to satisfy the appellate court that [the district court] has considered the parties' arguments and has a reasoned basis for exercising [its] own legal decisionmaking authority." *Rita v. United States*, 127 S. Ct. 2456, 2468 (2007). Although the district court's analysis on the record was brief, it was legally sufficient. The district court considered the guidelines range and applied a sentence within that range. *See* 18 U.S.C. § 3553(a)(4); *United States v. Carty*, No. 05-10200, 2008 WL 763770, at *5-6 (9th Cir. Mar. 24, 2008) (en banc) (stating that a "within-Guidelines sentence ordinarily needs little explanation" and "[t]he district court need not tick off each of the § 3553(a) factors to show that it has

considered them"). "The record makes clear that the sentencing judge listened to each argument" presented by Perez-Aguilar, but "simply found these circumstances insufficient to warrant a sentence lower than the Guidelines range . . . ." *Rita*, 127 S. Ct. at 2469.

The district court specifically imposed a sentence within the guidelines range because it reflected the seriousness of the offense, stating that the guidelines sentence was appropriate because it was a "significant" sentence for a "significant" offense. *See* 18 U.S.C. § 3553(a)(2)(A). The district court considered Perez-Aguilar's history and characteristics when it heard argument regarding his family and when it explicitly noted Perez-Aguilar's behavior over the previous ten years. *See* 18 U.S.C. § 3553(a)(1). Finally, the district court determined that the disparity between the guidelines sentence in this case and the sentence ordinarily imposed on "fast track" defendants was not unwarranted despite Perez-Aguilar's argument that his conduct was similar to that of defendants permitted to plead pursuant to a "fast track" program. *See* 18 U.S.C. § 3553(a)(6).

Perez-Aguilar also argues that the panel should vacate his sentence because the district court erroneously applied a 16-level enhancement pursuant to U.S.S.G. § 2L1.2(b)(1)(A) based on Perez-Aguilar's prior conviction under CAL. PENAL CODE § 286(b)(1). Because Perez-Aguilar never objected to the application of the

16-level enhancement in the district court, we review this issue for plain error. *See United States v. Olano*, 507 U.S. 725, 731-32 (1993).

The district court did not err in applying the 16-level enhancement because Perez-Aguilar's prior conviction for "sodomy with another person who is under 18 years of age" in violation of CAL. PENAL CODE § 286(b)(1) categorically constitutes statutory rape under the guidelines and thus qualifies as a crime of violence. *See* U.S.S.G. § 2L1.2(b)(1)(A) & app. n.1(B)(iii). It is irrelevant that California sets the age of consent at eighteen and most other states set it at sixteen or seventeen because "[t]he term 'statutory rape' is ordinarily, contemporarily, and commonly understood to mean the unlawful sexual intercourse with a minor under the *age of consent specified by state statute*." *United States v. Gomez-Mendez*, 486 F.3d 599, 603 (9th Cir. 2007) (emphasis added). Because the guidelines do not define statutory rape, we apply this definition for purposes of our categorical analysis under *Taylor v. United States*, 495 U.S. 575 (1990). *See id.* Based on the definition in *Gomez-Mendez*, we find that Perez-Aguilar's prior conviction under CAL. PENAL CODE § 286(b)(1) categorically qualifies as statutory rape and thus constitutes a crime of violence under U.S.S.G. § 2L1.2(b)(1)(A).

AFFIRMED.